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interfere with enforcement proceedings, the Commission may, during only such time as that circumstance continues, treat the records as not subject to the requirements of 5 U.S.C. 552 and this subpart.

§ 503.34 Annual report of public information request activity.

(a) On or before February 1 of each year, the Commission shall submit to the Attorney General of the United States, as required by the Attorney General, a report which shall cover the preceding fiscal year and which shall include:

(1) The number of determinations made not to comply with requests for records made to the Commission under this Subpart and the reasons for each such determination;

(2)(i) The number of appeals made by persons under § 503.32, the result of such appeals, and the reason for the action upon each appeal that results in a denial of information; and

(ii) A complete list of all statutes relied upon to authorize withholding of information under § 503.33(a)(3), a description of whether a court has upheld the Commission's decision to withhold information under each such statute, and a concise description of the scope of any information withheld;

(3) The number of requests for records pending before the Commission as of September 30 of the preceding year, and the median number of days that such requests had been pending as of that date;

(4) The number of requests for records received by the Commission and the number of requests which the Commission processed;

(5) The median number of days taken to process different types of requests;

(6) The total amount of fees collected for processing requests; and

(7) The number of full-time staff devoted to processing requests for records under this section, and total amount expended for processing such requests.

(b) Each such report shall be made available to the public at the Office of the Secretary, Federal Maritime Commission, Washington, D.C. 20573 and on the Commission's web site (www.fmc.gov).

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EFFECTIVE DATE NOTE: At 80 FR 52641, Sept. 1, 2015, § 503.34 was amended by revising paragraph (a), effective Nov. 2, 2015. For the convenience of the user, the revised text is set forth as follows:

§ 503.34 Annual report of public information request activity.

(a) On or before February 1 of each year, the Commission must submit to the Attorney General of the United States, in the format required by the Attorney General, a report on FOIA activities which shall cover the preceding fiscal year pursuant to 5 U.S.C. 552(e).

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Subpart E—Requests for Testimony by Employees Relating to Official Information and Production of Official Records in Litigation

SOURCE: 79 FR 24351, Apr. 30, 2014, unless otherwise noted.

§ 503.37 Purpose and scope; definitions.

(a) This subpart sets forth the procedures to be followed with respect to:

(1) Service of summonses and complaints or other requests or demands directed to the Federal Maritime Commission (Commission) or to any Commission employee or former employee in connection with litigation arising out of or involving the performance of official activities of the Commission; and

(2) The oral or written disclosure, in response to subpoenas, orders, or other requests or demands of judicial or quasi-judicial authority (collectively “demands”), whether civil or criminal in nature, or in response to requests for depositions, affidavits, admissions, responses to interrogatories, document production, or other litigation-related matters, pursuant to the Federal Rules of Civil Procedure, the Federal Rules of Criminal Procedure, or applicable state rules (collectively “requests”), of any material contained in the files of the Commission, any information relating to material contained in the files of the Commission, or any information acquired while the subject of the demand or request is or was an employee

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of the Commission, as part of the performance of that person's duties or by virtue of that person's official status.

(b) This subpart applies in all litigation in which the United States is not a party.

(c) For purposes of this subpart, the term employee includes:

(1) any current or former Commissioner or employee of the Commission;

(2) any other individual hired through contractual agreement or on behalf of the Commission or who has performed or is performing services under such agreement for the Commission;

(3) Any individual who served or is serving in any consulting or advisory capacity to the Commission, whether informal or formal.

(d) The Commission authorizes the General Counsel or the General Counsel's designee to make determinations under this section.

(e) For purposes of this subpart, the term litigation encompasses all pre-trial, trial, and post-trial stages of all judicial or administrative actions, hearings, investigations, or similar proceedings before courts, commissions, grand juries, or other judicial or quasi-judicial bodies or tribunals, whether criminal, civil, or administrative in nature. This subpart governs, *inter alia*, responses to requests for discovery, depositions, and other litigation proceedings, as well as responses to informal requests by attorneys or others in situations involving litigation. However, this subpart shall not apply to any claims against the Commission by Federal Maritime Commission employees (present or former), or applicants for Commission employment, for which jurisdiction resides with the U.S. Equal Employment Opportunity Commission; the U.S. Merit Systems Protection Board; the Office of Special Counsel; the Federal Labor Relations Authority; or a labor arbitrator operating under a collective bargaining agreement between the Commission and a labor organization representing Commission employees; or their successor agencies or entities.

(f) For purposes of this subpart, official information means all information of any kind, however stored, that is:

(1) In the custody and control of the Commission;

(2) Relates to information in the custody and control of the Commission; or

(3) Was acquired by Commission contractors, employees, former employees or former contractors as part of their official duties or because of their official status within the Commission while such individuals were employed by or served on behalf of the Commission.

(g) Nothing in this subpart affects disclosure of information under the Freedom of Information Act (FOIA), 5 U.S.C. 552, the Privacy Act, 5 U.S.C. 552a, the Government in the Sunshine Act, 5 U.S.C. 552b, the Commission's implementing regulations, or pursuant to congressional subpoena.

(h) Nothing in this subpart affects the disclosure of official information to other federal agencies or Department of Justice attorneys in connection with:

(1) Litigation conducted on behalf or in defense of the United States, its agencies, officers, and employees; or

(2) Litigation in which the United States has an interest.

(i) This subpart is intended only to provide guidance for the internal operations of the Commission, and is not intended to, and does not, and may not be relied upon to create any right or benefit, substantive or procedural, enforceable at law by a party against the United States.

§ 503.38 General prohibition.

(a) No employee or former employee of the Commission shall, in response to a demand or request, produce any material contained in the files of the Commission, or disclose any information relating to or based upon material contained in the files of the Commission, or disclose any information or produce any material acquired as part of the performance of that person's official duties or because of that person's official status, without prior approval of the Commission in accordance with §§ 503.39 and 503.40.

§ 503.39 Factors to be considered in response to demands or requests.

(a) The Commission will determine whether testimony or the production of